

Attorney's Docket No.: 02103-211002/Q42

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCESRECEIVED
CENTRAL FAX CENTER
JAN 23 2004Applicant : Donald F. Hamilton et al.
Serial No. : 08/777,958
Filed : December 24, 1996
Title : VEHICLE TRUNK WOOFERArt Unit : 2644
Examiner : Ping W. Lee

OFFICIAL

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450RESPONSE TO NOTICE OF NON-COMPLIANCE WITH BRIEF

Dear Commissioner:

Responsive to the Notice of Non-Compliance With 37 CFR 1.192(c) mailed January 15, 2004, withdrawal of the Notification is respectfully requested because the Appeal Brief filed on October 30, 2003 was not defective for failure to comply with one or more provisions of 37 CFR 1.192(c).

M.P.E.P. ¶1208 under the heading "ANSWER" reads, "The Examiner should furnish the Appellant with a written statement in answer to the Appellant's brief within 2 months after the receipt of the brief by the Examiner." This written statement should have been furnished by December 30, 2003.

Instead, the Examiner filed a printed form headed "Notification of Non-Compliance With 37 CFR 1.192(c) and placed an X in boxes before the printed statements, "A single ground of rejection has been applied to two or more claims in this application, and the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief." The Notification did not identify which single ground of rejection had been applied to two or more

CERTIFICATE OF MAILING OR TRANSMISSION

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Date of Transmission

Signature

Charles Hicken
Typed or Printed Name of Person Signing Certificate

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claims in the application and the brief included the statement required by 37 CFR 1.192(b)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.

In fact, the brief does present arguments in support thereof in the argument section of the brief.

These arguments are set forth follows:

There is no disclosure that the BAZOOKA bass tubes are disposed in a rearward section of the trunk occupying negligible useful trunk volume to cause a smaller decrease in calculated trunk volume than would occur with the one speaker mounted in the rear deck as called for by claims 2, 3 and 7-10. These claims are independently patentable over the reference, for at least these reasons.

There is no disclosure of an audio speaker system wherein the vehicle is characterized by a front seat frequency response and a rear seat frequency response constructed and arranged to be free of an undesirable peak in the rear seat frequency response of the vehicle between 80-100 Hz and free of an undesirable hole between 60-80 Hz in the front seat frequency response of the vehicle as called for by claims 5 and 10. These claims are independently patentable over the reference, at least for these reasons.

Nor does the reference disclose that the rear deck is free of speaker holes as called for by claims 6-10. These claims are independently patentable over the reference, at least for these reasons. Pp. 7-8.

We have shown above how it is impossible for this reference to anticipate claims 1-10. We incorporate by reference the reasoning set forth above distinguishing the rejected claims over the reference, including reasoning why claims are independently patentable. *Supra* 5-6. P. 9

We have shown above how it is impossible to anticipate claims 1, 2, 4-7, 9 and 10 with this reference. The Examiner has not identified anything in this reference which suggests the desirability of modifying what is there disclosed to meet the terms of these claims. We have also shown above and incorporate herein the remarks in support of claims being separately patentable over this reference, which reasoning is equally applicable to supporting their patentability under Section 103. *Supra* 7-8. P. 10.

In view of the authorities and reasoning in the Brief, the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the

Why they
stand or fall
together

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invention disclosed and claimed in this application, and since the brief complies with 37 CFR 1.192(c)(7), notice of allowance is respectfully requested. Should the Examiner believe that the application is not in a condition for allowance, or that the brief does not comply with 37 CFR 1.192(c)(7), she is respectfully requested to telephone the undersigned attorney at (617) 521-7014 to discuss what she believes is necessary to place the application in a condition for allowance or the brief in compliance with 37 CFR 1.192(c)(7).

Any charges may be applied to deposit account 06-1050, Order No. 02103-211002.

Respectfully submitted,

FISH & RICHARDSON P.C.

Date: JAN 23 2004


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Date January 23, 2004

To Ping W. Lee
Primary Examiner
U.S. Patent and Trademark Office (Patent)
Assistant Commissioner for Patents
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Facsimile number 02103-21100002 / 703-308-5403

From Charles Hieken

Re Applicant: Donald F. Hamilton et al.
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Message

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